Office of Command Counsel Newsletter

October 2002, Volume 02-05

Nick Femino Announces His Retirement

Dominic A. Femino, Jr. the Deputy Command Counsel since March 1997 announced his retirement after more than 30 years of Federal service. His last day of work was October 18. Nick was both a respected and liked by all who had the pleasure of serving with him during his long career.

He received a Bachelor of Arts degree from Bowdoin College in 1969 and a Juris Doctor degree from Boston University School of Law in 1972. He also was a Distinguished Military Graduate of the ROTC Program at Boston University.

Mr. Femino was sworn into the Massachusetts State Bar in December 1972 and joined the U.S. Army as a Captain in The Judge Advocate General's Corps on January 1, 1973.

After discharge from military service in 1976, Mr. Femino became a civilian procurement attorney for AMC's Aviation Command at Fort Eustis. In 1979 he served as a procurement law attorney for the U.S. Army Signals Warfare Laboratory at Vint Hill Farm Station. Prior to his selection to the SES and as Deputy Command Counsel Nick was the long time Chief Counsel for Vint Hill Farms Station. Nick was selected AMC Attorney of the Year in 1989.

Nick was considering postponing retirement until: fe signed a recording contract highlighting his harmonica playing, read all the letters and works of Nathaniel Hawthorne, collected all the old postcards from his home town of Salem, Massachusetts, and panned for gold throughout the Blue Ridge mountains.

Although these were all doable, a pledge he could not make was waiting till the Boston Red Sox won the World Series.

Nick is an expert in the field of acquisition law. But, as important he never lost sight of the fact that people are important and critical to the success of a legal community and an organization's success.

Nick will devote full time to his farm in Nokesville, Virginia and to be with his wife Beverly and sons Anthony and Tom.

Best wishes and good luck.

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Commanders' Conference Point Papers from the Command Counsel

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8. Contractors on the Battlefield—**Art Lees**

9. ADR Update—**Steve Klatsky**

10. Foreign Disclosure—**Louis Rothberg**

These point papers are referenced in the various focus areas and are included as enclosures.

At each Commanders' Conference **Ed Korte** presents the group with a series of 10 timely point papers.

Thanks to **Vera Meza** who manages the compilation each quarter.

Coming Soon:

A report on the Command Legal Program for 2001-2002 and the CLP for 2003-2004

Newsletter Details

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Check out the Newsletter on the Web at http://www.amc.army.mil/amc/command_counsel/

Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

Acquisition Law Focus

Proposed FMS Legislation benefits the Army

AMC currently has some stocks in long supply: when you have more than enough of an item, but not yet so many athat you have an excess.

Currently, items which are in long supply and not expected to be replaced may be sold at "actual value" and the funds deposited in the miscellaneous receipts account of the US Treasury. The U.S. Army gets little benefit from the transfer.

Proposed legislation would permit items to be sold for "actual value" whether they are intended to be replaced or not.

The funds may be placed into the account from which the item may be replaced. Or, the funds may be used to buy any authorized item with a similar function or used to upgrade current stock.

In either case the Army can capture and use these funds. The proposed legislation is 22 U.S.C Sec 2761(a).

POC is **Craig Hodge**, DSN 767-8940.

Enclosure 1

Public-Private Partnerships

Public-private partnerships are agreements between organic Government-owned, Government operated depots or arsenals and one or more private industry or other entities to perform work or utilize facilities and equipment.

Dave HarringtonDSN 767-7570, drafted a point paper describing the various statutues and regulations governing this area.

Congress has endorsed these arrangements to increase facility utilization and readiness and to lower costs.

10 USC 2474 allows performance of work by depot-level activities that have been designated as Centers of Industrial and Technical Excellence (CITES) in their core competencies and allows use of CITE facilities by contractors.

All five AMC maintenance depots have been designated as CITEs in their core competencies. ASPI is being implemented at Rock Island, Watervliet and Pine Bluff Arsenals. Public-private arrangements are in effect or are being pursued at all locations.

Enclosure 2.

List of Enclosures

Acquisition Law Focus

SSAs do not see A-76 in-house cost estimates

Source Selection Authorities wanting to leave no piece of paper unturned to ensure that their source selection decisions withstand assault may have an issue with the A-76 rules that prohibit them from reviewing in-house cost estimates before they are opened for public inspection.

A-76 policies, to include the Supplemental Handbook, state that the SSA reviews all private sector offers and the in-house Management Plan to ensure that they provide the same level of effort. However, the Supplement specifically states that the SSA does not review the in-house cost estimate.

An Independent Review Officer (IRO) reviews the in-house cost estimate to ensure that it is consistent with the Performance Work Statement (PWS). Once the SSA has confirmed that both the in-house and private sector proposals are offering the same level of effort and the IRO has approved the in-house cost estimate, the Contracting Officer opens the in-house cost estimate, prepares a Cost Comparison Form, and announces a tentative decision. This begins the appeals process.

The Commercial Activity (CA) Study Team prepares the in-house cost estimate and CA manager works with the IRO to resolve any problems prior to the IRO's approval of the in-house cost estimate. This process can be elevated if necessary.

Department of Defense Instruction (DODI) 4100.33 further provides that the Head of the DoD Component or its designee shall certify prior to opening or closing that the in-house cost estimate is based on the most efficient and cost-effective operation practicable.

The A-76 Circular, the Supplemental Circular, and the volumes of DOD and Army policies offer no further safeguards relative to getting the in-house cost estimate right.

Why they exclude Source Selection Authorities from reviewing in-house cost estimates when they have a vested interest in them is unclear, but attorneys may be hard-pressed to inform them that it is to protect the integrity of the process.

POC is TACOM-RIA's **Joe Picchiotti**, DSN 793-8435.

Foreign Disclosure of AMC Technical Data

During the Spring, 2002, AMCIG conducted an audit of AMC compliance with applicable foreign disclosure regulations. The IG presented its finding July 2002

During the audit, the Director of International Cooperative Programs Activity requested IG assistance in obtaining HQDA and DOD clarification of legal requirements and guidance on technology transfers to ensure compliance with U.S. export control laws.

The IG accepted this request, and the recommendation made to the CG was adopted. HQ DA assistance is pending.

POC is **Louis Rothberg**, DSN 767-8147 (Encl 3).

ADR Update

A point paper on three AMC ADR programs highlights two acquisition areas: Partnering and the AMC-Level Protest Program. Our Partnering Inventory is 85. ANd, the AMC-Level Protest Program has resolved 576 cases. POC is **Stephen Klatsky**, DSN 767-2304.

Enclosure 4

Center for Patent Prosecution Excellence (CPPE)

The AMC Office of the Command Counsel recently established the AMC Center for Patent Prosecution Excellence. The CPPE is a comprehensive, integrated system for protecting, leveraging, and licensing AMC intellectual property.

The goals of the CPPE are threefold:

1. To protect valuable AMC intellectual property;

2. To bring in royalty and other income to AMC labs; and

3. To increase the military and commercial state-of-the-art

The CPPE will be run by a customer-focused team that facilitates the invention disclosure and patenting process for the inventor and the lab director. In addition, the CPPE will maximize technology transfer professionals' ability to license AMC technology and bring royalty and other income into the lab.

There are five on-going initiatives within the CPPE:

1. Invention Disclosure. The CPPE will encourage the protection of valuable intellectual property through inventor outreach, process improvement, and patent prioritization.

2. Patent Services Contract. This CPPE will team with several high quality intellectual property law firms during the patenting process, in order to improve the quality of patent applications and patent prosecution. AMC recently issued a solicitation and is currently in the proposal evaluation phase. 3. Docket Management. The CPPE will automate the reporting of all AMC inventions and patents, in order to add visibility to our intellectual property and to assist in meeting Congressional reporting requirements. The CPPE will use a web-based program ("IPMIS") which was developed by the Navy and is available at minimal cost to us.

4. Technology Transfer. The CPPE will team with partnership intermediaries to identify potential commercial partners to license AMC technology. The laboratory may use its share of the royalties for R&D and other purposes called out in the law. The inventor also retains a portion of the royalties.

5. Attorney Recruitment and Retention. The CPPE will establish methods to recruit and retain highly skilled intellectual property lawyers. To do this, the CPPE will establish a "Lab to Lawyer" program which will incentivize interested, qualified AMC scientists and engineers to become patent agents or patent counsel.

POC is **Bill Adams**, DSN 767-2301.

Enclosure 5.

Employment Law Focus

Accounting for Personnel Accompanying Military Forces

The Civilian Tracking System (CIVTRACKS), which became operational at the beginning of June 2002, is designed to capture data on Department of the Army civilians to assist tactical commanders in identifying all personnel within their areas of operation. This capability includes data on contractors, Red Cross, AAFES and other DoD component personnel.

MAJ Art Lees, DSN 767-2556 authored a point paper that explains the various capabilities contained in the CIVTRACKS system (Encl 6),

Nepotism: Its a family affair

Mike Lassman, DSN 767-8040, offers a point paper on this recurring issue.

Nepotism is the term used to describe the granting of improper preference, assistance or advancement to an individual related by blood or marriage. It is prohibited under both 5 USC 2302(b)(7) and 5 USC 3110(b).

A public official may not appoint, employ, promote, advance, or **advocate** for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he **exercises jurisdiction or control** any individual who is a relative of the public official. 5 USC 3110 (b).Enclosure 7.

REVISED MSPB FORMS PACKAGE PUBLISHED

The Merit Systems Protection Board is seeking public comments on its proposed MSPB Appeal Forms Package, which is a comprehensive revision of the current MSPB Appeal Form.

As required by the Paperwork Reduction Act, on September 4, 2002 the MSPB published a notice in the Federal Register,

Comments are due to MSPB by November 4, 2002. Link to the MSPB Appeal Forms:http://www.mspb.gov/whatsnew/applformpack/newformspage.html

The revision would require all appellants to file Form 185-1; a second form would be filed depending on the nature of the particular appeal. The revision is also intended to prepare for a future system of electronic filing.

Removal for Refusal to be Vaccinated is Upheld

The US Court of Appeals for the Federal Circuit ruled that the Navy could fire two civilian seamen who refused to be vaccinated against anthrax. Mazares v. Department of the Navy, No.01-3337. The vaccination was ordered when their vessel was docking in South Korea—considered a country at high risk. Removal for this form of insubordination was not excessive for the two employees, both of whom with more than 10 years of service.

Employment Law Focus

No Fear Legislation

The Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002--No FEAR Act, P.L. No: 107-174, was enacted 15 May 2002. The effective date is 1 October 2003 (beginning of FY 04).

The legislation grew out of a GAO report that the number of discrimination complaints filed by federal employees grew tremendously in the 1990's and a House investigation finding a "disturbing pattern of intolerance, harassment and discrimination at the EPA."

The Act emphasizes notification of employees, increases the accountability of agencies, and establishes reporting requirements:

Each Federal agency will be required to reimburse the Judgment Fund out of agency operating expenses for the payment of judgments, awards and settlements attributable to discrimination or reprisal for whistleblowing or for the exercise of appeal rights.

Linda Mills, DSN 767-8049, prepared a point paper on this very important piece of legislation.

Enclosure 8

Whistleblower Decision: Easier to get hearing on the merits

On 4 Sept 02, the MSPB issued a significant decision Rusin v. Department of Treasury, CH-1221-00-0028-W-1, Sept 4, 2002,that will make it easier for employees claiming whistleblower status to receive a hearing on the merits of an individual right of action (IRA) after exhausting the administrative procedures provided by the Office of Special Counsel.

In so doing, the Board overruled the jurisdictional requirements set forth in Geyer v DoJ.

POC is **Linda Mills,** DSN 767-8049. (Case summary is at Encl 9).

Report of First Advanced Labor and Employment Law Course in the December Issue

Arbitrator Power *IS* Limited!

In case you think that the FLRA's reluctance to consider "interlocutory appeals" in 57 FLRA No. 194 (see previous e-mail and http://www.flra.gov/decisions/v57/57-194.html) provides further evidence that arbitrators are unrestrained and can get away with anything, you might want to see http://www.flra.gov/decisions/v57/57-193.html for a reminder that the arbitrator's power is not unlimited. The case digest follows:

57 FLRA No. 193

U. S. Dept. of Veterans Affairs, Northern Arizona Veterans Administration Health Care System Prescott, Arizona and AFGE, Local 2401 (White, Arbitrator), 0-AR-3498 (Decided July 5, 2002).

The Authority explained that arbitrators exceed their authority when they fail to resolve an issue submitted to arbitration, resolve an issue not submitted to arbitration, disregard specific limitations on their authority, or award relief to those not encompassed within the grievance.

Environmental Law Focus

Installation Management Agency Legal Support to AMC: Role of AMC Environmental Team

On 6 October 2002, the Installation Management Agency (IMA) became operational.

The AMC Command Counsel recently issued a memorandum outlining the basic strategy for providing the environmental/real estate legal support in this new organizational environment.

At active installations, the local legal office or, if there is no local legal office, the MSC Legal Office should continue to be the first line of legal support for our installation commanders and staff.

At BRAC/excess installations, the attorneys who are supporting particular sites should continue to provide this support to the maximum extent possible until the responsibility for the site transitions to another U.S. Army legal office.

At the headquarters level, the AMC Environmental Law team **Stan Citron** and **John German** will continue to perform substantially the same responsibilities as in the past. The AMC Environmental Law team will continue to be actively involved in reviewing:

a. Environmental issues of command interest (e.g., issues that have the potential for generating public, media, regulatory, or congressional interest).

b. Any potential disagreements between the installations and the various IMA organizations.

c. Environmental fines and penalty cases.

d. Environmental agreements, and

e. Environmental litigation support coordination

In addition, the AMC Environmental Law team will continue to be available to provide advice and guidance to the field attorneys on day-to-day questions.

The AMC Environmental Law team will remain active in BRAC/Real Estate matters by supporting the National Capitol Region (NCR) BRAC Field Office.

Environmental Law Team : Sharing the Workload

A summary of the AMC Environmental Law team responsibilities is as follows:

Compliance

Stan Citron has the lead on RCRA/CAA/CWA/SDWA; Conventional and Chemical Weapons; Safety/Radiological issues.

John German has the lead on NEPA/Unexploaded Ordnance and Pollution Prevention matters.

Restoration

John German has the lead.

Real Estate

Stan Citron has the lead.

Litigation Support

John German has the lead,

Ethics Focus

Significant Ethics Issues --A 2002 Status Report

There are several programmatic changes underway in the ethics arena. The goal is to make the rules consistent with Federal government needs and practices and to improve program efficiency.

Automated Financial Dislosure System

There is a DA effort underway to develop an automated system that identifies financial report filers (SF 278 and OGE Form 450) and notifies them of their filing requirement.

Criminal Code Review

OGE and the Department of Justice have initiated a comprehensive review of the ethics provisions in the criminal code and will propose a revised chapter of the United States Code.

The provisions to be reviewed include those on bribery, conflicts of interest, gifts and gratuities, representation by Federal employees, and post-employment conflicts of interest. Some of these provisions date back to the Civil War. Although they have been revised over the years, they still reflect the activities of a Federal government different from today's government

DOD Rewriting the JER

DOD General Counsel is rewriting the JER. The JER supplements OGE's ethics regulations and incorporates them. In many places, the JER repeats itself and the OGE regulations. Besides making some substantive changes the rewriters will attempt to eliminate the repetition. The rewrite is expected sometime in 2003.

Travel Card

Congress and the Executive Branch are scrutinizing the travel and purchase card programs. Extensive abuse of both has been brought to light. Abusers are being disciplined and fixes are being sought to eliminate abuse and to attract credit card company interest in the programs.

POC is **Bob Garfield**, DSN 767-8003

Enclosure 10

Hatch Act Point Paper

Just in time for election season. Additionally, an article on the Hatch Act is in the August Issue of the AMC Command Counsel Newsletter. POC is **Bob Garfield**, DSN 767-8003.

Enclosure 11

Foreign Gift--Minimal Value Rule Changes

On September 4, 2002, the General Services Administration (GSA) published a notice in the Federal Register. The notice states that, for purposes of gifts from foreign governments to Federal employees, the definition of "minimal value" has been changed from $260 to $285. The notice states that the effective date of this change is January 1, 2002. GSA modifies the definition of "minimal value" every 3 years to reflect changes in the Consumer Price Index.

Ethics Focus

Anti-Lobbying Law and Guidance--18 USC 1913

TACOM-ARDEC's **John McCambridge**, DSN 880-6583, delivers a fine article on an important subject: the law and interpretive guidance pertaining to anti-lobbying under 18 U.S.C. Sec 1913.

Criminal Provisions

The criminal anti-lobbying law provides "no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment".

To date, there are no known convictions under this law.

Section 8012 of the FY2002 DoD Appropriations Act provides:

None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional actions on any legislation or appropriation matters pending before the Congress.

Every recent DoD appropriations act has contained identical language.

The paper also addresses cases, Justice Department interpretations and examples of violations.

The article concludes by reciting the contacts of AMC policy contained in a December 10, 1999 memorandum, subject: Congressional Relations and Contacts.

Enclosure 12

Faces In The Firm

Hello

The Office of Command Counsel welcomes back **Larry Anderson**, a veteran AMC attorney, from DOD.

Larry, a retired JAG Officer who had assignments at both AMC Europe and HQ AMC, joined the AMC Business Operations Law Division.

Captain Phyllis Smith joined the General Law Division in August. Phyllis is working on legal asssitance and military law matters.

Job Assignments

Ed Stolarun, a veteran of over 30 years with AMC, and an intellectual property attorney with a wide range of experience was named Team Leader of the Information Technology and Intellectual Property Law Branch, Business Operations Law Division

Milestone

As the Newsletter goes to press, **Steve Klatsky**, Assistant Command for Alternative Dispute Resolution, completed 30 years of government service.

Steve started his AMC career, entering the Army after law school as a Military Police Officer at Sierra Army Depot. After two years he transferred to the Judge Advocate General Corps. He spent two years as a Captain at HQ AMC, and stayed with AMC after leaving the service.

Steve was an original member of the Department of the Army Labor Counselor Program.

STRICOM

Effective 1 October 2002 STRICOM was organizational changed to a Program Executive Office reporting directly to DA ASALT. Although no longer a major subordinate command of AMC, matrix support arrangements are being considered as we go to press.

Thanks to **Harlan Gottlieb** and **Laura Cushler** for their outstanding service.

LexisNexis Corner

(Editors Note: the copy of the LexisNexis Corner article is difficult to reproduce for the body of the Newsletter. So , we will always have the complete version as an enclosure. The body of the Newsletter will highlight the contents of the entire document.)

The October issue of the LexisNexis Corner highlights new enhancements and time save search tips.

Enhancements

New features include Shepardizing MSPB decisions, use of the fast print button, the printer/download utility, source selection tabs, finding a source tab, and editing your last 20 sources.

Time-Saver Search Tips

Check out the practice area pages for helpful ideas. These cover many disciplines, such as public contracting, labor and employment, environmental, patent and litigation.

Also, find out how the history button saves all of your searches for the entire day.

Thanks to **Rachel Hankins** and **Corrin Gee-Alvardo.**

Enclosure 13

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AMCCC INFORMATION PAPER 19 July 2002

SUBJECT: Proposed Change to FMS Legislation

PURPOSE: To provide recent information on Proposed FMS Statute Change

BACKGROUND:

· AMC currently has some stocks in long-supply, such as 155 mm self-propelled cannon. Long-supply is when you have more than enough of an item (otherwise you might be in short-supply), but not yet so many that you have excess.

· Items in excess are normally given to friendly countries as Excess Defense Articles and the US Army gets little benefit from the transfer.

· Currently, items which are in long-supply and not expected to be replaced may be sold at "actual value" and the funds deposited into the miscellaneous receipts account of the US Treasury, and the US Army gets little benefit from the transfer.

· The price that must be charged for items intended to be replaced must be the cost of replacement less depreciation. Items, which are in long-supply and are expected to be replaced, can be sold and the funds returned to the procurement account to replace the items. Normally, there is not much difference between "actual value" and "replacement cost less depreciation." If however, the intended replacement has significant up-grades over the item being sold, the price can be distorted.

Current Legislation

22 U.S.C. § 2761. Sales from stocks

(a) Eligible countries or international organizations; basis of payment valuation of certain defense articles.
(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars--
(A) in the case of a defense article not intended to be replaced at the time such agreement is entered into, the price charged shall not be less than the actual value thereof;
(B) in the case of a defense article intended to be replaced at the time such agreement is entered into, the estimated cost of replacement of such article, including the contract or production costs less any depreciation in the value of such article; or

AMCCC
SUBJECT: Proposed Change to FMS Legislation

Proposed Revision of Legislation

22 U.S.C. § 2761. Sales from stocks

(a) Eligible countries or international organizations; basis of payment valuation of certain defense articles.
(1) The President may sell defense articles and defense services from the stocks of the Department of Defense and the Coast Guard to any eligible country or international organization if such country or international organization agrees to pay in United States dollars--
(A) in the case of a defense article the price charged shall not be less than the actual value thereof. The proceeds of the sale may be deposited into the procurement account from which the article may be replaced, and used to purchase any authorized article with a similar function, including articles that have been modernized or upgraded, or used to upgrade or modernize current stock to any authorized configuration; or
(B) in the case of the sale of a defense service…..

- In the proposed legislation items are sold for "actual value," whether they are intended to be replaced or not;
  - the funds may be placed into the account from which the item may be replaced; and
  - the funds may be used to buy any authorized item with a similar function or used to upgrade current stock.

- The intent of the proposed legislation is to reduce the number of items in long-supply, by selling them at "actual value" and to capture the proceeds for modernization by the US Army.

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AMCCC-B-BI POINT PAPER 20 August 2002

SUBJECT: Public-private partnerships with GOGO facilities

PURPOSE: Provide Information on policy and legislation facilitating use of Government depot and arsenal resources by the private sector

- Public-private partnerships are agreements between organic Government-owned, Government operated depots or arsenals and one or more private industry or other entities to perform work or utilize facilities and equipment.

- Partnerships include, but are not restricted to, the following forms:

  - Use of public sector facilities, equipment and employees to perform work or produce goods for the private sector (basically, sales to the private sector);

  - Private sector use of depot or arsenal equipment and facilities to perform work for the private sector; and

  - Work-sharing agreements, using both public and private sector facilities and or employees, where each sector is workloaded directly and efforts are coordinated by the Government.

- Legislation is necessary for the Government arsenal or depot to sell supplies or services to the private sector. Existing legislative authorities:

  - 10 USC 4543: allows manufacture and sale of items to private sector by working capital funded activities, including depots, arsenals and plants that manufacture munitions, provided there is no private sector source.

  - 10 USC 2208(j): allows manufacture and remanufacture of items and sale of items and services by working capital funded activites to the private sector for use on DOD contracts, provided the contract or subcontract was open to competition by public activities.

  - 10 USC 2208(h): allows sale of working capital funded inventory items to contractors for

use in performing DOD contracts.

- 10 USC 2539(b): allows sale of equipment or materials for use in IR & D or demonstration to friendly foreign governments, and sale of test services by test facilities.

- 10 USC 2474: allows performance of work by depot-level activities that have been designated as Centers of Industrial and Technical Excellence (CITES) in their core competencies and allows use of CITE facilities by contractors.

- 10 USC 4551 note: Arsenal Support Program Initiative (ASPI): allows arsenal workforce, consistent with 10 USC 4543, to manufacture weapons, components and related products for commercial contractors who are given use of the facility. Contractor may subcontract for commercial use of the facility.

- In enacting CITE legislation for depots and ASPI for arsenals, Congress has endorsed public-private partnerships to increase facility utilization and readiness and lower costs.

- Public-private partnerships can be accomplished without legislation.

  - Contractors can be given use of facilities for DOD work under FAR part 45.

  - Work can be assigned to a depot or arsenal and coordinated with a contractor who is given use of facilities. This is the "workshare" arrangement.

- DOD issued specific policy on public-private partnerships for depot maintenance activities (CITES) specifying that when a depot maintenance workforce is used to support a partnership, the organic workforce must be engaged in work that is defense related.

- Implementation: All five AMC maintenance depots have been designated as CITEs in their core competencies. ASPI is being implemented at Rock Island, Watervliet and Pine Bluff Arsenals. Public-private arrangements are in effect or are being pursued at all locations.

RELEASED BY: EDWARD J. KORTE ACTION OFFICER: DAVE HARRINGTON
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AMCCC INFORMATION PAPER 19 July 2002

SUBJECT: Foreign Disclosure of AMC Technical Data

PURPOSE: To provide recent information on AMC IG findings

BACKGROUND:

· During the Spring, 2002, AMCIG conducted an audit of AMC compliance with applicable foreign disclosure regulations. The IG presented its finding July 2002.

· During the audit, the Director of International Cooperative Programs Activity requested IG assistance in obtaining HQDA and DOD clarification of legal requirements and guidance on technology transfers to ensure compliance with U.S. export control laws.

· The need for clarifying legal requirements on the applicability or non-applicability of Department of State and Department of Commerce export controls of Army technology transfers to ensure compliance with U.S. export laws is not new. In March 2000 the DOD IG reported a lack of consideration of export license matters by Army and other military departments' laboratories. In April, 2002, the General Accounting Office completed a review of Cooperative Research and Development Agreements at two Army laboratories and reported a need for the Army to clarify its guidance on technology transfers to ensure compliance with U.S. export control laws.

RESULT:

· In July 2002, AMC CG accepted IG recommendations that AMCIG request HQDA IG for their assistance in obtaining a coordinated clarification of policy from HQDA, DOD, as well as the Departments of State and Commerce on exemption for export license requirements when the transfer is pursuant to an International Cooperative Agreement or Program.

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AMCCC INFORMATION PAPER 11 September 2002

SUBJECT: Alternative Dispute Resolution Program Update

PURPOSE: To inform the Commander's Conference of the significant current developments in and activities of the AMC ADR Program.

FACTS:

· REDS: The Resolving Employment Disputes Swiftly (REDS) Program Review is underway. We have received responses to a survey sent to each AMC command and installation and we are visiting six to eight installations to determine status, lessons learned and needs to ensure we achieve maximum program benefit. An after-action report will be provided to each AMC command, installation and activity.

· PARTNERING: The CG receives a weekly Major Contract Forecast, with one entry identifying which contracts are to be partnered. Our goal of expanding the Partnering for Success Program is premised on the expansion of Partnering on these major programs.

  · The AMC Partnering Inventory is approaching 85 Partnered arrangements.

  · The CG expects each MSC CG to be supportive of efforts to partner these major contracts.

  · The MSC Lead Partnering Champion plays a vital role in the use of Partnering at each MSC. It is important that each MSC CG ensure that the LPC is given the required authority to educate the workforce on Partnering and to encourage the expansion of Partnering.

· HQ, AMC-LEVEL PROTESTS: The HQ, AMC-Level Protest Program has resolved 576 protests with less than 10% appealed to another forum and less than _% of the decisions overturned. The average time it takes to resolve a protest remains at 17 work days.

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AMCCC-B-IP 16 AUG 2002

SUBJECT: AMC Center for Patent Prosecution Excellence

PURPOSE: To Update MSC Commanders on Recent Intellectual Property Law Initiatives

O The AMC Office of the Command Counsel recently established the AMC Center for Patent Prosecution Excellence ("CPPE"). The CPPE is a comprehensive, integrated system for protecting, leveraging, and licensing AMC intellectual property.

O The goals of the CPPE are threefold:

OO To protect valuable AMC intellectual property;

OO To bring in royalty and other income to AMC labs; and

OO To increase the military and commercial state-of-the-art

O The CPPE will be run by a customer-focused team that facilitates the invention disclosure and patenting process for the inventor and the lab director. In addition, the CPPE will maximize technology transfer professionals' ability to license AMC technology and bring royalty and other income into the lab.

O There are five on-going initiatives within the CPPE.

1. Invention Disclosure. The CPPE will encourage the protection of valuable intellectual property through inventor outreach, process improvement, and patent prioritization.

2. Patent Services Contract. This CPPE will team with several high quality intellectual property law firms during the patenting process, in order to improve the quality of patent applications and patent prosecution. AMC recently issued a solicitation and is currently in the proposal evaluation phase.

3. Docket Management. The CPPE will automate the reporting of all AMC inventions and patents, in order to add visibility to our intellectual property and to assist in meeting Congressional reporting requirements. The CPPE will use a web-based program ("IPMIS") which was developed by the Navy and is available at minimal cost to us.

4. Technology Transfer. The CPPE will team with partnership intermediaries to identify potential commercial partners to license AMC technology. The laboratory may use its share of the royalties for R&D and other purposes called out in the law. The inventor also retains a portion of the royalties.

5. Attorney Recruitment and Retention. The CPPE will establish methods to recruit and retain highly skilled intellectual property lawyers. To do this, the CPPE will establish a "Lab to Lawyer" program which will incentivize interested, qualified AMC scientists and engineers to become patent agents or patent counsel.

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AMCCC-B-BI (27-1a) POINT PAPER 25 July 2002

SUBJECT: Contractors Accompanying the Force -- Accounting for Contractor Personnel Deployed in Support of Army Operations.

PURPOSE: To identify the Army's newly-unveiled personnel data system to account for contractor personnel, highlighting the current capabilities of the system and projecting the future capabilities of the system.

SUMMARY: The Civilian Tracking System (CIVTRACKS), which became operational at the beginning of June 2002, is designed to capture data on Department of the Army civilians to assist tactical commanders in identifying all personnel within their areas of operation. This capability includes data on contractors, Red Cross, AAFES and other DoD component personnel.

- Operation Desert Shield/Storm Key Lesson Learned. During Operation Desert Shield/Storm there was no centralized automated data system that provided for the tracking of civilians once they were deployed, so tactical commanders were unable to identify all personnel within their areas of operation/responsibility.

- Replacement Operations Application Management System (ROAMS). In response to this key lesson learned, ROAMS was created to track civilians from the CONUS Replacement Center (CRC) into the theater of operation. Until recently, however, there was no visibility once the civilians arrived in theater.

- Civilian Tracking System (CIVTRACKS). CIVTRACKS fills the void in personnel accountability, allowing the capture of data on all deployed civilians, including contractor personnel.

    - Data Entry Burden. CIVTRACKS does not increase the burden upon G-1 personnel to enter the data into the system. Each individual tracked in the system is responsible for the input of his/her own data into the CIVTRACKS database.

    - Current Data Entry Method. CIVTRACKS is a web based system that allows for worldwide data entry via keyboard through connections accessing the internet. Drawbacks include human error each time data is keyed in, and the potential for fraud, e.g., an individual who is actually CONUS could enter false information indicating that he/she is OCONUS.

- Future Data Entry Method. Long-term, the plan is to use the Common Access Card (CAC), also known as the "Smart Card", as the front end of CIVTRACKS, i.e., serve as the mechanism for entering data, to facilitate the tracking of deployed civilians. Under the Smart Card concept deployed civilians will be able to swipe their card at any location and the tracking data will be transmitted to a central collection point. This method will greatly reduce the chances of human error in data entry, and also reduce the incidences of fraud, i.e., at least the card must be at the deployment location where it is swiped in order to initiate data collection.

- CIVTRACKS and Revised AR 715-9. The regulation governing contractors accompanying the force (AR 715-9) is currently being revised. According to the action officer responsible for the revision, the plan is to reference CIVTRACKS as the system to use in the updated regulation.

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AMCCC INFORMATION PAPER 23 July 2002

SUBJECT: Nepotism

PURPOSE: To provide information on a topic that is frequently discussed by senior leaders and counsel.

BACKGROUND:

· Nepotism is the term used to describe the granting of improper preference, assistance or advancement to an individual related by blood or marriage. It is prohibited under both 5 USC 2302(b)(7) and 5 USC 3110(b).

· Can a relative be employed in the same chain of command as another employee?

LAW:

· A public official may not appoint, employ, promote, advance, or **advocate** for appointment, employment, promotion, or advancement, in or to a civilian position in the agency in which he is serving or over which he **exercises jurisdiction or control** any individual who is a relative of the public official. 5 USC 3110 (b).

NOTES:

· Advocacy on behalf of a relative is defined in 5 CFR 310.103(c) as a recommendation to employ, advance or reward a relative. Delivering a daughter's summer employment application to a personnel specialist who is not his subordinate does not constitute improper advocacy. However, if the application were delivered to an employee that is subordinate to the public official, then this official would be improperly advocating his relative's employment.

· Nepotism can arise when relatives are placed in the public official's chain of command. It is improper for a public official to employ a relative below him regardless of how many layers of supervision exist below the public official. Also, an employee should not make performance evaluations of a relative or recommend that a subordinate be given a performance award. Thus, a relative should not supervise another relative.

OTHER LAW:

- Also, an employee may not participate in any official matter that will have a direct and predictable effect on his financial interests. The financial interests of a spouse are imputed to the employee. 18 U.S.C. § 208. There is a regulatory exception, but the employee still may not "[m]ake determinations, requests, or recommendations that individually or specially relate to, or affect, the salary or benefits of [his spouse]." 5 C.F.R. § 2640.203(d).

- An employee may not participate in an official matter that affects the financial interest of a member of his household, or where a person with whom he has a "covered relationship" is a party (or represents a party), if a reasonable person with knowledge of the relevant facts would question the employee's impartiality in the matter. 5 C.F.R. § 2635.502. See also 5 C.F.R. § 2635.702(d).

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AMCCC-G POINT PAPER 30 August 2002

SUBJECT: The No FEAR Act

PURPOSE: Provide an introduction to the **Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002**.

FACTS:

- The No FEAR Act, P.L. No: 107-174, was enacted 15 May 2002.
- The effective date is 1 October 2003 (beginning of FY 04).
- The legislation grew out of a GAO report that the number of discrimination complaints filed by federal employees grew tremendously in the 1990's and a House investigation finding a "disturbing pattern of intolerance, harassment and discrimination at the EPA."
- The Act emphasizes notification of employees, increases the accountability of agencies, and establishes reporting requirements:
    - **Reimbursement Requirement**: Each Federal agency will be required to reimburse the Judgment Fund out of agency operating expenses for the payment of judgments, awards and settlements attributable to discrimination or to reprisal for whistleblowing or for the exercise of appeal rights.
        - Agencies have a "reasonable time" to reimburse the Judgment Fund and may extend payments over several years to avoid reductions in force, furloughs, reductions in pay or benefits, or an adverse effect on the mission of the agency.
        - In FY 2000, Federal agencies paid about $26 million in discrimination complaint settlements and judgments

during the administrative process; an additional $43 million was paid out of the Judgment Fund.

- **Notification Requirement**: Federal employees and applicants must receive written notice of rights and remedies under anti-discrimination and whistleblower protection laws, the information must be posted on the Internet, and employees must receive training.

- **Reporting Requirement**: Each agency must submit an annual report to Congress including

  - the number and status of cases arising under anti-discrimination and whistleblower protection laws,
  - the amount of money required to be reimbursed in connection with each case,
  - agency policy relating to disciplinary actions against employees who discriminate or commit other prohibited personnel practices,
  - the number of employees disciplined,
  - year-end statistical data on the number and type of complaints filed, the processing time for complaints, and the number and type of final agency actions involving a finding of discrimination, and
  - an analysis of all such information.

The Act also requires GAO to study the effects of eliminating the requirement that Federal employees exhaust administrative remedies before filing complaints with the Equal Employment Opportunity Commission (EEOC) and the effects on Federal agency operations of the reimbursement requirements of the No FEAR Act and the Contract Disputes Act of 1978.

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On 4 Sept 02, the MSPB issued a significant decision that will make it easier for employees claiming whistleblower status to receive a hearing on the merits of an individual right of action (IRA) after exhausting the administrative procedures provided by the Office of Special Counsel. In so doing, the Board overruled the jurisdictional requirements set forth in Geyer v DoJ. The following summary is taken from the MSPB web site:

Rusin v. Department of the Treasury
CH-1221-00-0028-W-1
September 4, 2002

Whistleblower Protection Act
- Jurisdiction, generally
- Proof of claim, generally
- Violation of law, rule, or regulation

Applying Geyer v. DoJ, 63 M.S.P.R. 13 (1994), the AJ dismissed this IRA appeal for lack of jurisdiction, without a hearing; the AJ concluded that the appellant's claim that he disclosed alleged violations of the instructions on the use of government credit cards was not a non-frivolous allegation of a whistleblowing disclosure. On PFR, the Board disagreed, and in so doing, overruled Geyer.

The Board began by noting the tension between Geyer and Yunus v. DVA, 242 F.3d 1367 (Fed. Cir. 2001). Under Geyer, to establish Board jurisdiction over an IRA appeal an appellant must show by preponderant evidence that he engaged in whistleblower activity, the agency took or failed to take, or threatened to take or fail to take, a "personnel action," and he raised the issue before the OSC, and proceedings before the OSC were exhausted. Yunus, however, states that the Board has jurisdiction over an IRA appeal if the appellant has exhausted his administrative remedies before OSC and makes nonfrivolous allegations that: (1) He made a protected disclosure, and (2) the disclosure was a contributing factor in the agency's decision to take or fail to take a personnel action. Thus, under Geyer a determination of IRA jurisdiction turns on the weight of the evidence, whereas under Yunus such a determination turns on the sufficiency of the pleadings. Additionally, unlike Geyer, Yunus makes the "causative" (contributing

factor) element jurisdictional, at least insofar as the appellant must make a non-frivolous allegation of causation
under Yunus.

The Board found that it was clear from Yunus and other court decisions that the Federal Circuit disapproves of the Geyer
test. The Board thus overruled Geyer and adopted the Yunus approach.

Turning to the facts of the case, the Board found that the appellant had exhausted his OSC remedy, that he made
non-frivolous allegations that he was affected by "personnel actions," and that under the knowledge - timing test he made a
non-frivolous allegation of contributing factor. The Board then explained that the appellant alleged that he disclosed a violation
of a "rule" within the meaning of 5 U.S.C. § 2302(b)(8). Whether a directive is a "rule" does not depend on the title of
the document in which it appears. Rather, a substantive examination is required. Although the term "rule" is not
defined in the WPA, considering the remedial purpose of the WPA, dictionary definitions of "rule," and the purpose
of the instructions on the use of government credit cards, the Board concluded on the facts presented that the
appellant made a non-frivolous allegation that he reasonably believed what he disclosed was a violation of a
"rule." The Board did not adopt a specific definition of "rule."

Finding the Yunus test met, the Board remanded the appeal for further adjudication.

Board Member Slavet issued a separate opinion concurring in the Board decision overruling Geyer and adopting Yunus.
Board Member Slavet also addressed two other decisions, Spruill v. MSPB, 978 F.2d 679 (Fed. Cir. 1992), and Cruz v.
Department of the Navy, 934 F.2d 1240 (Fed. Cir. 1991) (en banc). According to Board Member Slavet, Spruill and
Yunus both adopt a pleadings-based test for IRA jurisdiction, but to prevail the appellant must also present preponderant
evidence on the elements of the claim; the elements are thus jurisdictional and merits. Cruz, on the other hand, held in a chapter
75 case (i.e., not an IRA) that jurisdiction depends on proof that the appellant was affected by an appealable action. Board
Member Slavet stated that Spruill interpreted Cruz as actually addressing a merits issue. Board Member Slavet also pointed

out that a dismissal under Geyer is jurisdictional, whereas if sufficient allegations are presented under Yunus and the claim fails on the proof, the dismissal is "on the merits," which carries res judicata effect. Thus, after Yunus, an AJ should advise an appellant to come forward with all known whistleblower retaliation contentions to minimize the chance of unwitting forfeiture of arguments for relief.

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AMCCC INFORMATION PAPER 26 July 2002

SUBJECT: Significant Ethics Issues 2002

PURPOSE: To provide information on expected ethics program changes

BACKGROUND:

· There are several programmatic changes underway in the ethics arena. The goal is to make the rules consistent with Federal government needs and practices and to improve program efficiency.

· No AMC activity is scheduled for an Office of Government Ethics (OGE) Program Review, i.e., audit, for calendar year 2002.

· There is a DA effort underway to develop an automated system that identifies financial report filers (SF 278 and OGE Form 450) and notifies them of their filing requirement.

- The DOD Joint Ethics Regulation (JER) makes personnel offices responsible for identifying and keeping track of who must file a financial disclosure report and receive Annual Ethics Training.

- Overall consensus of the ethics and personnel communities is that the current system is ineffective.

- Target date for implementation is 2 August 2002 with a comprehensive process review scheduled for August 2003.

· OGE and the Department of Justice have initiated a comprehensive review of the ethics provisions in the criminal code and will propose a revised chapter of the United States Code.

- The provisions to be reviewed include those on bribery, conflicts of interest, gifts and gratuities, representation by Federal employees, and post-employment conflicts of interest. Some of these provisions date back to the Civil War. Although they have been revised over the years, they still reflect the activities of a Federal government different from today's government.

- Because these rules are set by statute we do not expect any changes for a few years.

- OGE is reexamining its regulations on ethics training with the goal of making training more effective. Until OGE resolves this issue, it has reduced the number of Program Reviews.

- DOD General Counsel is rewriting the JER. The JER supplements OGE's ethics regulations and incorporates them. In many places, the JER repeats itself and the OGE regulations. Besides making some substantive changes the rewriters will attempt to eliminate the repetition. The rewrite is expected sometime in 2003.

- General Services Administration (GSA) adjusts the "minimal value" amount for gifts from foreign governments every three years. Federal officials may keep gifts from foreign governments up to this amount, currently $260 United States retail value. GSA is scheduled to make an adjustment in 2002. These adjustments are normally retroactive to January 1.

- Congress and the Executive Branch are scrutinizing the travel and purchase card programs. Extensive abuse of both has been brought to light. Abusers are being disciplined and fixes are being sought to eliminate abuse and to attract credit card company interest in the programs.

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AMCCC INFORMATION PAPER 26 July 2002

SUBJECT: Political Activities by Federal Employees

PURPOSE: To provide information on the rules governing political activities by Federal officials

BACKGROUND:

· It is DOD policy to encourage DOD employees and members of the Armed Forces to carry out their obligations of citizenship to the maximum extent possible.

· There are some limitations on political participation, which vary depending on the individual's employment status. For AMC personnel there are three categories of personnel: SES members, other civilian employees, and military officials.

- The rules governing civilian employee participation in the political process for both SES and other employees, are set out in the Hatch Act. 5 USC 7321, et seq.

- The rules governing military personnel are set out in AR 600-20.

· "Political activity" means an activity directed toward the success or failure of a political party, political candidate, or partisan political group. It does not include participation in matters that are not partisan such as referenda on issues or non-partisan elections. One, however, must be very careful because if any candidate in an election runs under a party label, the election is considered partisan.

· The Office of Special Counsel (OSC) is the Federal government agency responsible for Hatch Act enforcement. Ethics counselors will assist employees who have questions about political activities; however, their views are only advisory. Employees who are interested in running for public office or who want to participate actively in the political process should contact OSC directly for advice and counsel. Employees who willfully violate the Hatch Act may be removed for such activity.

· Military personnel who are considering participation in the political process should contact their servicing legal office for advice and counsel.

· There are some special rules that allow greater participation in the political process for Federal employees who reside in Maryland and Virginia counties in the National Capital Region and counties in other geographic areas designated by OSC that have large concentrations of Federal employees.

· Office of Command Counsel has issued an Ethics Advisory on subject that goes over the do's and don'ts on participating in political activities. This Advisory, which has been disseminated to AMC ethics counselors is enclosed

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Ethics Advisory 02-03, Political Activities

Even though the year 2002 elections are 5 months away, we are already seeing campaign activity, not only in some Congressional races, but also at the state and local level. A Federal statute, the Hatch Act, governs civilian employees' participation in the political process. While it is DoD policy to encourage DoD employees and members of the Armed Forces to carry out the obligations of citizenship to the maximum extent possible, there are some limitations, which vary depending on the individual's employment status. The limitations for members of the Senior Executive Service, other Federal employees, and members of the Armed Forces are different. This Ethics Advisory summarizes permissible and prohibited activities and should be regarded as a general guide. The Office of Special Counsel is charged with enforcing the Hatch Act. Civilian employees should contact it with specific questions. It has a Hatch Act Hotline, 1-(800) 854-2824. Military personnel should contact me at (703) 617-8003.

PERMISSIBLE ACTIVITIES

DoD civilian employees **(except career members of the Senior Executive Service may not engage in activities 10, 11, 12 and 13)**, in their personal capacities **may**:

1. Be candidates for public office in nonpartisan elections;

2. Register and vote as they choose;

3. Assist in voter registration drives;

4. Express opinions about candidates and issues;

5. Contribute money to political organizations;

6. Attend political fundraising functions;

7. Join and be an active member of a political party or club;

8. Sign nominating petitions;

9. Campaign for or against referendum questions, constitutional amendments, or municipal ordinances;

10. Campaign for or against candidates in partisan elections;

11. Make campaign speeches for candidates in partisan elections;

12. Distribute campaign literature in partisan elections; and

13. Hold office in political clubs or parties.

PROHIBITED ACTIVITIES

Civilian DoD employees (including career members of the Senior Executive Service) **may not**:

1. Use official authority or influence for the purpose of interfering with or affecting the result of an election;

2. Collect political contributions unless both the collector and the donor are members of the same Federal labor organization or employee organization and the donor is not a subordinate;

3. Knowingly solicit or discourage the political activity of any person who has business with DoD;

4. Engage in political activity while on duty;

5. Engage in political activity while in any Federal workplace;

6. Engage in political activity while wearing an official uniform or displaying official insignia identifying the office or position of the DoD employee;

7. Engage in political activity while using a Government owned or leased vehicle;

8. Solicit political contributions from the general public;

9. Be a candidate for public office in partisan elections;

10. Wear political buttons on duty; and

11. Contribute to the political campaign of another Federal Government employee who is in the DoD employee's chain of command or supervision or who is the employing authority.

SPECIAL RULES FOR EMPLOYEES WHO RESIDE IN VIRGINIA AND MARYLAND

There are special rules for employees residing in Maryland and Virginia municipalities or political subdivisions in the immediate vicinity of the District of Columbia who want to run for local political office. The list of designated municipalities and political subdivisions is quite long; therefore, if you want to engage in one of the following activities it is important that before you get started, you first discuss your intentions with the Office of Special Counsel. Employees residing in those locales **may**:

1. Run as an independent candidate for election to partisan political office in elections for local office in the municipality or political subdivision;

2. Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;

3. Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;

4. Solicit, accept, or receive uncompensated voluntary services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or political subdivision; and

5. Solicit, accept, or receive uncompensated volunteer services on behalf of an individual who is a candidate for local partisan political office and who represents a political party.

Because the Hatch Act has its own definitions--e.g., a "partisan political office" means any office for which any candidate is nominated or elected as representing a political party--I urge you to discuss any questions you might have with the Office of Special Counsel. The AMC Office of Command Counsel will give you our opinion (703) 617-8003, but because Office of Special Counsel has Hatch Act enforcement authority, only its opinion is binding on the United States Government.

For active duty military personnel the rules are more restrictive. They are set out in AR 600-20.

PERMITTED ACTIVITIES

A soldier on active duty **may**:

1. Register, vote, and express a personal opinion on political candidates and issues as a private citizen, but not as a representative of the Armed Forces;

2. Promote and encourage other soldiers to exercise their voting franchise so long as it does not constitute an attempt to influence or interfere with the outcome of an election;

3. Join a political club and attend its meetings when not in uniform;

4. Serve as an election official if such service is not as a representative of a partisan political party, does not interfere with military duties, is performed while out of uniform, and has the approval of the installation commander;

5. Sign a petition for specific legislative action or a petition to place a candidate's name on an official election ballot so long as the signing does not obligate the soldier to engage in partisan political activity and is done as a private citizen and not as a representative of the Armed Forces;

6. Write a letter to the editor of a newspaper expressing the soldier's personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign or concerted solicitation of votes for or against a political party or partisan political cause or candidate;

7. Make monetary contributions to a political organization, party or committee favoring a particular candidate or slate of candidates subject to statutory dollar limitations; and

8. Display a political sticker on the soldier's private vehicle.

PROHIBITED ACTIVITIES

A soldier on active duty **will not**:

1. Use official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or require or solicit political contributions from others;

2. Be a candidate for civil office in Federal, state, or local government except in circumstances permitted by AR 600-20, or engage in public or

organized soliciting of others to become partisan candidates for nomination or election to civil office;

3. Participate in partisan political management or campaigns or make public speeches in the course thereof;

4. Make a campaign contribution to another member of the Armed Forces or to a civilian officer or employee of the United States for promoting a political objective or cause;

5. Solicit or receive a campaign contribution from another member of the Armed Forces or from a civilian officer or employee of the United States for promoting a political objective or cause;

6. Allow or cause to be published partisan political articles signed or written by the soldier that solicit votes for or against a partisan political party or candidate;

7. Serve in any official capacity or be listed as a sponsor of a partisan political club;

8. Speak before a partisan political gathering of any kind for promoting a partisan political party or candidate;

9. Participate in any radio, television or other program or group discussion as an advocate of a partisan political party or candidate;

10. Conduct a political opinion survey under the auspices of a partisan political group or distribute partisan political literature;

11. Use contemptuous words against certain officeholders such as the President, Vice President, Congress, Secretary of the Defense or the Army, state governors, and state legislatures.

12. Perform clerical or other duties for a partisan political committee during a campaign or on an election day;

13. Solicit or otherwise engage in fund raising activities in Federal offices or facilities including military reservations, for a partisan political cause or candidate;

14. March or ride in a partisan political parade;

15. Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on the top or side of a private vehicle;

16. Participate in any organized effort to provide voters with transportation to the polls if the effort is organized by or associated with a partisan political party or candidate;

17. Sell tickets for, or otherwise actively promote political dinners and similar fundraising events; and

18. Attend partisan political events as an official representative of the Armed Forces.

For activities not expressly prohibited that may be contrary to the spirit and intent of the Department of Defense's policy for political activities for members of the Armed Forces, rules of reason and common sense apply. Any activity that could be viewed as associating the Department of the Army directly or indirectly with a partisan political cause or candidate will be avoided.

The policy does not preclude participation in local nonpartisan political campaigns, initiatives, or referendums so long as the soldier does not wear a uniform or use Government property or facilities, allow participation to interfere with or prejudice the soldier's performance of military duties, or engage in conduct that may imply that the Department of the Army has taken an official position or is otherwise involved in the local political campaign or issue.

For civilian and military personnel, the rules on political activity are a lot to digest at one time. I encourage you to read them carefully and not hesitate to ask any questions you might have.

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Anti-Lobby Law and Guidance

STATUTES:

18.U.S.C. 1913, a criminal anti-lobbying law provides "no part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined under this title or imprisoned not more than one year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment".

To date, there are no known convictions under this law.

Section 8012 of the FY2002 DoD Appropriations Act provides:

None of the funds made available by this Act shall be used in any way, directly or indirectly, to influence congressional actions on any legislation or appropriation matters pending before the Congress.

Every recent DoD appropriations act has contained identical language.

CASES:

The Justice Department, which is responsible for the enforcement of 18 U.S.C. sect. 1913, has interpreted this provision as prohibiting the expenditure of appropriated funds for substantial grass roots lobbying campaigns of telegrams, letters and other private forms of communication designed to encourage members of the public to pressure members of

Congress to support Administration or Department legislative or appropriations proposals. The Justice Department has stated that a "substantial" grass-roots lobbying campaign is one which involves the expenditure of $50,000 or more. Lobbying Activity in support of China Permanent Normal Trade Relations B-285298, May 22, 2000.

Statutory provisions like Section 8012 of the FY2002 DoD Appropriation Act apply primarily to indirect or grass-roots lobbying, and not to direct contact with or appeals to Members of Congress. Thus, this type of statutory language prohibits agency appeals to members of the public that they contact their elected representatives to indicate support of or opposition to pending legislation. See 60 Comp.Gen. 423, 428 (1981) and B-270875, July 5, 1996.

In Forest Service Violation of Section 303 of the 1998 Interior Dept. B-281637, May 14, 1999, GAO found that agency activities urging members of the public during a meeting to contact Congress in support of road funding initiatives in legislation and in the budget, and a campaign to promote public support for a budget proposal seeking to change the way certain payments to the states from Forest Service revenues are calculated violated section 303 of the 1998 Interior Dept. Appropriation Act which prohibited the expenditure of funds for certain lobbying activities undertaken by covered Federal Officials.

Section 303 provided "No part of any appropriation contained in this Act should be available for an activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete.

In 1997, Agency Officials began to develop a Natural Resource Agenda and a Communication plan. The Agenda contained three legislative goals; the first two dealt with legislative funding goals for Forest service roads and third with a change to the way payments were made to the states. Congressional consideration was not complete on this legislative proposal during the time period in which the lobbying activities took place. The Communication plan's goal was to have key advisors receive and understand the Natural Resource Agenda. The audience targeted included employees, Congress, the media and external groups. Communications were affected by internet and intranet sites, speeches to interested groups at their functions, roundtables, feature articles, op-ed pieces, one on one briefing, posters, brochures, electronic newsletters, and press conferences ..."to name a few"... Agencies officials were requested to work aggressively

with employee interest groups and congressionals to move the full agenda forward.

GAO held the agency's activity intended to promote public support for the road funding legislative proposals as proscribed by section 303. Agency employees, at the very least, used appropriated funds in terms of their salaries to urge members of the public to inform Congress of their position on proposed legislation. Furthermore, section 303, not only prohibits grassroots lobbying of the sort engaged in here, but it works more broadly to restrict even implicit appeals. GAO found that this explicit appeal to the public is certainly encompassed within the ambit of section 303 and therefore is a violation of that provision.

GUIDELINES:

On December 10, 1999, AMC published a policy Memorandum entitled Congressional Relations and Contacts – AMC Headquarters and Major Subordinate Commands. This memorandum was intended to remind the staff and subordinate activities of their responsibility in keeping the AMC leadership and chain-of-command informed of Congressional interaction. The memorandum enclosed guidelines and a summary sheet.

The Guidelines generally provide that significant Congressional activity must be coordinated within the Headquarters, AMC, Congressional Liaison Office (AMCLL). This involves official visits to Headquarters and visits by the AMC Command Group to AMC installations. Coordination is through AMCLL.

The published Congressional relations and contact guidance is also covered in Army Regulation (AR) 1-20, Legislative Liaison; the Congressional Responsibilities, Standing Operating Procedures; and AMC-R 1-16 Congressional Relations.

CONCLUSION:

The above statutes, regulation, case law and AMC policy provide direction for individual and group interaction with Congress. Government employees should be cognizant of the various restrictions prohibiting lobbying Congress on government time using government personnel and resources.

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